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Clerk
District Court

JAN 13 2006

For The Northern Mariana Islands
By _____
(Deputy Clerk)

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IN THE UNITED STATES DISTRICT COURT

FOR THE

NORTHERN MARIANA ISLANDS

YU SUK CHUNG,

Plaintiffs,

vs.

**WOLRD CORPORATION
A CNMI Corporation.**

Defendants.

Civil Action No. 04-00001

**PLAINTIFF'S OPPOSITION TO
MOTION FOR CERTIFICATION
OR TO AMEND JUDGMENT**

Date : February 16, 2006

Time : 8:30 a.m.

Judge : Hon. Alex R. Munson

Defendant's Motion to Certify the Judgment pursuant to Rule 54(b) includes a request for this Court to stay "the trial of the fraudulent misrepresentation claim pending appeal". (Defendant's memorandum of page 2 Lines 17-18). The Defendant provides no support or reason for this Court to stay the trial now set for April 17, 2006. Regardless of whether or not this Court decides to exercise discretion to enter a final judgment on the breach of contract action, there is no good reason to stay the pending trial. In terms of judicial economy, it would seem more efficient to delay the entry of the Judgment until after the entire case has been fully litigated in order to prevent piecemeal appeals.

In the Ninth Circuit, the standard for determining whether multiple claims are presented in an action was set forth in *CMAX, Inc. v. Drewry Photocolor Corp.*, 295 F.2d 695 (9th Cir. 1961). "The word "claim" in Rule 54(b) refers to a set of facts giving rise to legal rights in the claimant, not to legal theories of recovery based on those facts." *Id* at 697. The Plaintiff's breach of contract and fraud causes of action require different elements of proof. However, both causes of action arise out of

1 the same transaction or occurrence. In terms of the Ninth Circuit's analysis in *CMAX*, Mr. Chung's
2 claims for fraud and breach of contract may be viewed as a single claim.

3 The Second prong of the analysis requires the court to determine whether there is just reason
4 for delay in the entry of Judgment. The decision is left to the sound discretion of the Court. *Sears,*
5 *Roebuck & Co. v. Mackey*, 351 U.S. 427, 100 L. Ed. 1297, 76 S. Ct. 895 (1956). However, the trial
6 court cannot in "its discretion" treat as "final" that which is not "final." *Id* at 437. To properly reach
7 the conclusion that there is no just reason for delay, "there must be some danger of hardship or
8 injustice through delay which would be alleviated by immediate appeal." *Campbell v. Westmoreland*
9 *Farm, Inc.*, 403 F.2d 939, 942 (2d Cir. 1968). The Defendant provided no record of such hardship or
10 injustice.

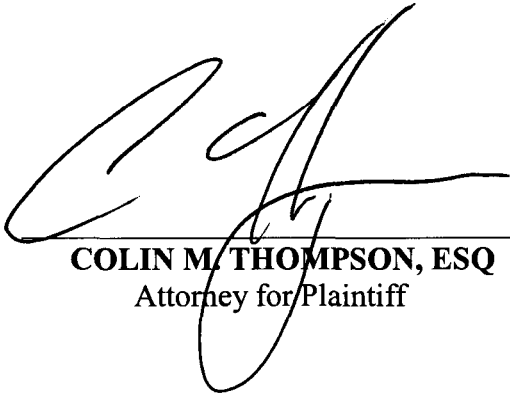
11 Accordingly, under the Ninth Circuit analysis, Mr. Chung's lawsuit constitutes a single claim
12 that is as yet not final. Defendant failed to demonstrate the necessity of an immediate entry of
13 judgment. Therefore, the defendant's motion should be denied. However, should the Court decide to
14 enter final judgment on the breach of contract claim, the Court should not stay the pending trial.
15 Because in order to certify the Judgment as final the Court must first determine that the breach of
16 contract and fraud causes of action constitute multiple claims pursuant to Rule 54, it follows that
17 staying the pending trial would do little to further judicial economy.

18 Although a court's stay order is reviewed for abuse of discretion *Nakash v. Marciano*, 882
19 F.2d 1411, 1413 (9th Cir. 1989), appellate courts emphasize the strict nature of this abuse of
20 discretion standard. "When a stay for reasons of "wise judicial administration" is contemplated,
21 "discretion must be exercised within the narrow and specific limits prescribed by the particular
22 abstention doctrine involved. . . . There is little or no discretion to abstain in a case which does not
23 meet traditional abstention requirements." *Mobil Oil Corp. v. City of Long Beach*, 772 F.2d 534, 540
24 (9th Cir. 1985) (quoting *C-Y Development Co. v. City of Redlands*, 703 F.2d 375, 377 (9th Cir. 1983).
25 *Intel Corp. v. Advanced Micro Devices*, 12 F.3d 908, 912 (9th Cir. 1993). Again the defendants do
not meet their burden to show that a stay of the April 17, 2006 trial is warranted.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendant's Motion to Amend Judgment.

Dated this 16th day of January, 2006



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